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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,824	10/07/2004	Robert I. Smith	1501.01	5823
21901	7590	09/06/2006	EXAMINER	
SMITH HOPEN, PA 180 PINE AVENUE NORTH OLDSMAR, FL 34677				MAHONE, KRISTIE ANNETTE
			ART UNIT	PAPER NUMBER
				3751

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/711,824	SMITH, ROBERT I.	
	Examiner	Art Unit	
	Kristie A. Mahone	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on October 7, 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on October 7, 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/14/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows.
2. To receive the benefit of an earlier application, the later-filed application must be an application for a patent for an invention which was also disclosed in the earlier application. The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). The disclosure of the prior-filed application, 60/481,477 ('477 application), fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application.

Specifically, the '477 application does not provide support for a ventilation system with a fan box (70) having a distinct water trap (100), air compartment (80), and fan compartment (90) as recited in Claim 1. Further, the "air flap" of Claim 2 is not supported by the '477 application. While Para. 0003 mentions a "flap," said flap is located between the "*fan box*" and the "*connecting tube*." The air flap of Claim 2 is positioned between the *fan compartment* and the *air compartment*. The adapted water fill tube of Claim 5 is also not provided for in the '477 application.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flush holes, water refill tube, inlet and outlet of the fan compartment, activation switch, air flap, air flow, water flow, normal operating water level, and *adapted* water refill tube must be shown or the features will be canceled from the claims. No new matter should be entered.
4. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the holding tank (e.g Para 7), electrical circuitry (Para 15) and the "traditional flapper" (Para 20) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawings. MPEP § 608.02(d).
5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the reference character 85, which is mentioned in Para. 17 of the description.
6. The drawings are further objected to due to the following informalities. First, the arrow reaching from reference character 70 in Figure 2 only extends into the holding tank. Thus, it appears that reference character 70 identifies the holding tank and not the fan box. Second, the exhaust pipe (60) is not labeled in Figure 2 and 3. Identification of the exhaust pipe would clarify how odorous gases are disposed of by the invention; i.e. through the exhaust pipe and into the sewer system.

Further, directional arrows should be provided to illustrate the air and water flow paths described in the specification. (Para. 7)

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The spacing of the lines of the specification makes reading difficult. New application papers with lines 1½ or double spaced on good quality paper are required.
8. Applicant is reminded of the proper content of an abstract of the disclosure. A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains.

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9. The abstract of the disclosure is objected to because it refers to the invention as an "odorless toilet," while the invention claimed is "a ventilation system for a toilet." (See Claim 1). In other words, the abstract is misleading because it suggests that the invention is directed to a new toilet, rather than a system that is incorporated into conventional toilets. Correction is required.

10. Applicant is also reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

11. The abstract of the disclosure is objected to because it is less than 50 words and lacks sufficient detail to assist readers to decide whether consulting the full patent is necessary. Correction is required.

Claim Objections

12. Claims 1-5 are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

13. Claim 1 is objected to because of the following informalities. Line 10 recites "the holding tank;" the holding tank limitation lacks positive antecedent basis in the claim because Claim 1 contains no earlier recitation of a holding tank. To expedite examination, the Examiner will assume in all instances that the term holding tank is synonymous with

"toilet tank" recited in Line 2. However, appropriate correction is required; i.e. substituting "toilet tank" for "holding tank", or prior introduction of a holding tank in the claim.

14. Similarly, Claim 5 is objected to because "the water tank" (Line 3) lacks positive antecedent basis. For the purpose of examination, the examiner will assume that the term "water tank" refers to the "toilet tank" recited in Claim 1, Line 2.

Claim Rejections - 35 USC § 112

15. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reasons. First, Claim 1 recites the limitation "the water compartment" in Lines 15 and 17. There is insufficient antecedent basis for this limitation in the claim; i.e. it is unclear which disclosed part "the water compartment" refers to because a "water compartment" was not previously recited in the claim. Presumably, the error results from a drafting oversight. To expedite prosecution, the

Examiner will assume in all instances that the term "water compartment" refers to the "air compartment," initially recited in Line 5. This supposition is based upon Paragraph 16 of the disclosure; i.e."...when the fan is activated...[t]he air then passes though the *air compartment* 80 into the fan compartment..." (emphasis added).

18. Claims 3 and 4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention without undue experimentation.

Specifically, it is unclear from the specification how "the activation switch being communicatively coupled to the flush handle ..." A person of reasonable skill in the art would be unable to produce the linkage between the handle, rod, chain, and flush valve of the toilet necessary to activate and deactivate the fan using the flush handle. Furthermore, it is not apparent what structure(s) in the handle allow the handle to be manipulated in an upward direction; i.e. conventional flush handles may be toggled between a horizontal, neutral position and a lowered, flushing position.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C.103(a) which forms the basis for obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

21. The prior art is applied as best understood considering the deficiencies in the claims and specification outlined above. Claims 1,2, and 5 are rejected under 35 U.S.C.103(a) as being unpatentable over Poirier et al (5,394,569) in view of Poister et al (3,902,203). Poirier discloses a ventilation system comprising: a bowl (1) having a gas trap and a rim (See Figure 2); a plurality of flush holes in said rim (See Figure 2); a toilet tank (18) having a flush handle, a water refill tube (H), an overflow pipe (24), and exhaust pipe (Figure 2).

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Figure 5 of Poirier further discloses a fan box having an air compartment, water trap, fan compartment (40), and fan (28). Referring to Figure 5 of Poirier, the area defined by members 66, 68, and 40 is seen as a "fan box." The subsection defined by 66 and 68 is seen as an "air compartment." As illustrated, such air compartment is in fluid communication with the overflow pipe (24), such that air flows through the flush holes, through conduit 22, upwardly along the overflow pipe, and into the air compartment (See col. 5, lin. 28-37).

A water trap is defined by the vertical projection of member 68. As can be seen, the water trap is adjacent to the compartment and in fluid communication with the air compartment and water (W) in the holding tank.

Regarding the fan compartment 40, the inlet (68a) of fan compartment 40 is adjacent the air compartment and communicates therewith (at 68a). The fan compartment outlet (56) is in fluid communication with an exhaust passageway (61) that discharges the contaminated air from the toilet. See col. 5, lin. 36-39. Poirier does not expressly disclose an exhaust pipe which connected to the toilet gas trap. However, Poister (Figures 1 and 2) teaches a toilet ventilation system wherein contaminated air may be discharged either in the dwelling or into an exhaust conduit (43) leading to the toilet gas trap (69). See also col. 4, lin. 29-32. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to divert the air from the fan compartment to the exhaust pipe and into the gas trap, as taught by Poister, to reduce possible contamination in the environment.

Poirier does not expressly disclose an activation switch, which is communicatively coupled with the fan. However, the feature of having a switch for activating and deactivating the fan is common practice and well known in the art. To be sure, Poister discloses a switch (60) for activating a blower (col. 4, lin. 59-60; figure 9)

Regarding Claim 2, Poirier's air compartment lacks an air flap. However, Poister teaches an anti-backflow air flap (80). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Poirier's system with an air flap, as taught by Poister, to prevent contaminated air from flowing back into the system. Notably, the feature of placing an air flap at particular location, such as in the air compartment, is considered an obvious design choice since it appears that the location of the air flap is not a criticality; and the modified Poirier system would perform equally well with the flap being located on the air compartment.

Regarding Claim 5, Figure 5 of Poirier shows that water refill tube (H) opens into the overflow pipe (24 at 24a), rather than into the water trap. However, the feature of rearranging the water refill tube, such that it opens into the water trap is considered an obvious design choice since it appears that Poirier's water refill tube would perform equally well with a water refill tube adapted to open into the water trap, and there is no criticality in the applicant's disclosure for the location of the water refill tube.

Allowable Subject Matter

22. Claims 3 and 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office Action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

23. The following prior art references were not relied upon, but are considered pertinent to applicant's disclosure. These references are cited to show related devices and systems.

2,297,935 (Baither)

2,985,890 (Baither)

6,983,491 (Curtis)

6,370,703 (Kim)

GB 2,209,356 (Pope et al)

GB 2,384,495 (Harrison et al)

US 2005/0081285 (Mundt)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is 571- 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000



Kristie A. Mahone
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8/31/06